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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated August 23, 2016 in which the ministry found the appellant was not eligible for designation as a Person With Disabilities (“PWD”) because he did not meet all of the criteria in Section 2(2) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The ministry was satisfied that the appellant has reached 18 years of age and that his impairment is likely to continue for at least 2 years. However, based on the information provided in the PWD Designation Application (“PWD application”) and Request for Reconsideration, the minister was not satisfied that:

- the Appellant has a severe mental or physical impairment; and
- the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform daily living activities (“DLA”) either continuously or periodically for extended periods; and
- as a result of these restrictions, the Appellant requires help to perform those activities through an assistive device, the significant help or supervision of another person, or the services of an assistance animal.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 2

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 2

PART E – Summary of Facts

Information before the minister at Reconsideration included:

1. A PWD application comprised of the applicant information signed by the Appellant on March 26, 2016, a Physician Report (PR) dated March 20, 2016 and an Assessor Report (AR) dated March 20, 2016, both completed by the same physician. In the PR, the physician reported that the Appellant has been his patient since May, 2002, and that he has seen him 2 to 10 times in the past 12 months. The Appellant did not complete a self-report citing difficulties writing as the reason.

The PWD application included the following information:

Diagnoses

PR

In the PR, the Appellant's diagnoses were reported as ADHD, PDD – NOS (Attention Deficit Hyperactivity Disorder, Pervasive Developmental Disorder – Not Otherwise Specified), with a date of onset of December, 2001. In the section dealing with health history, the physician wrote that according to the patient's mother the Appellant needs reminders for even the basic activities of daily living, appointments, getting up to go to work. He is not able to look after his own banking and finances, needs help with basic housework, laundry and even to wear proper clothing.

Degree and Course of Impairment

The physician wrote that the Appellant's condition is permanent.

Functional Skills

PR

The physician provided the following information regarding functional limitations:

The Appellant:

- Can walk 4+ blocks.
- Can climb 5+ steps unaided.
- Has no limitations lifting.
- Has no limitation remaining seated.
- Has difficulties with communication other than a lack of fluency in English, tangential speech.
- Has significant deficits with cognitive and emotional function in the areas of executive, language, memory, perceptual psychomotor, emotional disturbance, motivation, impulse control and attention or sustained concentration.

AR

The physician provided the following information for Mental or Physical Impairment:

- The section asking what are the applicant's mental or physical impairments that impact his/her ability to manage daily living activities (DLA's) is left blank.
- Ability to communicate: speaking is poor, with the comment "tangential speech"; reading, writing and hearing are good.
- Mobility and physical ability: all aspects, walking indoors and outdoors, climbing stairs, standing, lifting and carrying and holding are independent, with no comments.
- Cognitive and emotional functioning: major impacts are reported with emotion, impulse control and

attention/concentration; moderate impacts with insight and judgement, executive, memory, motivation, motor activity and other neuropsychological problems; minimal impacts with bodily functions and language; consciousness, psychotic symptoms and other emotional or mental problems are reported as having no impact.

Daily Living Activities (DLA's)

PR

The physician checked "no", the Appellant has not been prescribed any medication and/or treatments that interfere with his ability to perform DLA's.

The physician checked "yes", the impairment directly restricts the Appellant's ability to perform DLA's.

The physician provided the following information for DLA's:

- Personal self-care, meal preparation, daily shopping and management of finances are reported to be continuously restricted.
- Basic housework is reported to be periodically restricted.
- Mobility inside and outside the home and use of transportation are reported not to be restricted.
- Social functioning is left blank.
- No comments were provided about the degree of restriction or the assistance needed.

AR

- Personal Care: The physician reported that dressing, grooming, bathing, toileting, transfers in and out of bed and on and off a chair are independent; regulate diet requires periodic assistance.
- Basic Housekeeping: Laundry and basic housekeeping are reported to require periodic assistance.
- Shopping: Going to and from stores and carrying purchases home are independent; reading prices and labels, making appropriate choices and paying for purchases are reported to require periodic assistance.
- Meals: Safe storage of food is independent; meal planning, food preparation and cooking are reported to require periodic assistance.
- Pay rent and bills: banking, budgeting and paying rent and bills are reported to require periodic assistance.
- Medications: all aspects are reported to be independent.
- Transportation: all aspects are reported to be independent.
- No comments were provided for the above.

All aspects of social functioning were reported to require periodic support/supervision, with no additional comments. The Appellant was reported to have marginal functioning with immediate and extended social networks, with no additional comments.

Need for Help

PR

The physician checked "no", the Appellant does not require any prostheses or aids for his impairment.

AR

- The physician indicated the Appellant receives help from his mother.

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- There is no indication that the Appellant uses assistive devices.
 - The physician checked “no”, the Appellant does not have an assistance animal.
 - No additional information was provided.
2. A copy of a Ministry telephone log dated June 21, 2016, reporting a conversation with the Appellant’s physician in which the Ministry reported that the physician stated the Appellant was not present when the PWD application was completed, the information provided was reported by the Appellant’s mother and he could not confirm the level of impairment/restrictions because he had not seen the Appellant in over a year.
 3. The Ministry’s PWD Denial Decision Summary dated June 23, 2016.
 4. A copy of the Ministry’s letter to the Appellant dated June 23, 2016, advising him of their decision.
 5. The Appellant’s Request for Reconsideration, signed July 28, 2016.
 6. A copy of a letter To Whom it May Concern from a school principal dated April 11, 2002, stating that the Appellant has had great difficulty managing in his classroom due to emotional and behavioural problems, and will be attending school half days.
 7. A psychiatric consultation report dated March 10, 2003, stating that the Appellant meets the criteria for ADHD.
 8. A psychiatric consultation report dated December 17, 2001, reporting that the Appellant has behavioural difficulties and has ADHD.
 9. A psychiatric consultation report dated November 29, 1994.
 10. A psychiatric consultation report dated March 8, 2002.
 11. A psychiatric consultation report dated March 13, 1998.
 12. A psychiatric consultation report dated April 16, 1994.
 13. A psychiatric consultation report dated April 30, 1998.
 14. A copy of a plan dated March 14, 2002 from a school, detailing the steps to be taken to deal with the Appellant’s behavior.
 15. A copy of a psycho-educational consultation report dated March 6, 2002.
 16. A copy of an EEG report dated July 3, 2002.
 17. A copy of a letter To Whom it May Concern from a school principal and resource teacher dated February 23, 2007, stating the Appellant’s progress to date.
 18. A blank Ages 6 – 18 Expenses Form for autism funding, with a generic letter to a service provider..
 19. A copy of a bank transaction record and illegible invoice.
 20. A copy of a letter from a physician To Whom it May Concern dated March 10, 2008, stating that the

Appellant has a motor output problem and recommending a computer.

21. A multi-page Diagnostic Assessment Summary dated October 20, 2006, stating that the Appellant at age 12 had a history of ADHD, possible Tourette's syndrome, obsessive compulsive features, a written output disorder, a developmental coordination disorder, a nonverbal learning profile, seizures and possible bipolar diathesis, which are best summarized as PDD-NOS.
22. A letter, undated to "Dear Parent" from a health authority advising that there is a diagnosis of Autism Spectrum Disorder and giving details of support available.
23. A letter to the Ministry for the Appellant's mother dated July 13, 2016.

Additional evidence:

The Appellant submitted a letter from his physician dated May 31, 2016 in which the physician states that he is retiring. This was not admitted by the Panel as evidence under s.22(4) of the Employment and Assistance Act (EAA) as it is not evidence in support of information before the minister when the decision under appeal was made.

The Appellant submitted a statement from his mother dated September 19, 2016 further detailing the information previously provided about the Appellant's ability to perform DLA's. This letter was admitted by the Panel under s.22, EAA as evidence in support of information that was before the minister when the decision under appeal was made. The Ministry did not object to the admission of the letter.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision which found that the Appellant was not eligible for PWD designation was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. Based on the information provided in the PWD application and Request for Reconsideration, the Ministry was not satisfied that the following criteria in EAPWDA section 2 were met: the Appellant has a severe mental or physical impairment; and the impairment, in the opinion of a prescribed professional, directly and significantly restricts his ability to perform DLA's, either continuously or periodically for extended periods, and, as a result of these restrictions, he requires help to perform those activities.

Legislation

Persons with disabilities

2 (1) In this section:

"**assistive device**" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"**daily living activity**" has the prescribed meaning;

"**prescribed professional**" has the prescribed meaning.

(2) The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person has a severe mental or physical impairment that

- (a) in the opinion of a medical practitioner is likely to continue for at least 2 years, and
- (b) in the opinion of a prescribed professional
 - (i) directly and significantly restricts the person's ability to perform daily living activities either
 - (A) continuously, or
 - (B) periodically for extended periods, and
 - (ii) as a result of those restrictions, the person requires help to perform those activities.

(3) For the purposes of subsection (2),

- (a) a person who has a severe mental impairment includes a person with a mental disorder, and
- (b) a person requires help in relation to a daily living activity if, in order to perform it, the person requires
 - (i) an assistive device,
 - (ii) the significant help or supervision of another person, or
 - (iii) the services of an assistance animal.

EAPWDR

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i) prepare own meals;
- (ii) manage personal finances;

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- (iii) shop for personal needs;
 - (iv) use public or personal transportation facilities;
 - (v) perform housework to maintain the person's place of residence in acceptable sanitary condition;
 - (vi) move about indoors and outdoors;
 - (vii) perform personal hygiene and self care;
 - (viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

- (i) make decisions about personal activities, care or finances;
- (ii) relate to, communicate or interact with others effectively.

Severe mental or physical impairment

The diagnosis of a serious medical condition does not in itself determine PWD eligibility or provide evidence of a severe impairment. To satisfy the requirements of section 2(2) of the EAPWDA, evidence of how, and the extent to which, a medical condition restricts daily functioning must be considered. This includes evidence from the appellant and from a prescribed professional regarding the nature of the impairment and its impact on the appellant's ability to manage the DLA's listed in section 2(1) of the EAPWDR. However, section 2(2)(b) of the EAPWDA clearly sets out that the fundamental basis for the analysis of restrictions is the evidence from a prescribed professional, in this case, a physician.

Appellant's position – Severe mental impairment

The Appellant argued that he has long-standing diagnoses and significant deficits to cognitive and emotional functioning. He argued that he was diagnosed as autistic until the age of 19 and still has the condition, but suddenly he has to prove it again to a different ministry. He argued that his physician did not list his restrictions because he felt that confirming the Appellant's significant deficits would be enough, and he does not have direct experience of his difficulties because he does not live in the Appellant's home. The Appellant argued that the information provided by his mother about the level of support provided should be sufficient.

Ministry's position – Severe mental impairment

The Ministry argued that the Appellant does not have a severe mental impairment based on the information provided. The Ministry noted that although significant deficits are reported in eight areas of cognitive and emotional function, the physician in the AR indicated three major impacts, six moderate impacts and two minimal impacts in cognitive and emotional functioning. The Ministry stated that although the physician reported a requirement for periodic support/supervision with all aspects of social functioning, he did not explain the degree and duration of the support/supervision required, and although the Appellant is reported to have marginal functioning with both immediate and expended social networks, there is no indication that he requires help to maintain in the community.

Panel's decision – Severe mental impairment

The Panel finds that the Ministry reasonably determined the Appellant does not have a severe mental impairment based on the information provided. The Panel notes that the Appellant is reported in the PR to have significant deficits in eight areas of cognitive and emotional function, executive, language, memory, perceptual psychomotor, emotional disturbance, motivation, impulse control and attention or sustained concentration. The AR report states that he has major impacts in three areas: emotion, impulse control and

attention/concentration; moderate impacts in six areas, insight and judgement, executive, memory, motivation, motor activity and other neuropsychological problems and minimal impacts in two areas, bodily functions and language. Consciousness, psychotic symptoms and other emotional or mental problems are reported as having no impact. Social functioning is reported to require periodic support in all areas, and the Appellant is reported to have marginal functioning with immediate and extended social networks; however, there is no explanation or description of the type or amount of support required. The written information submitted by the Appellant is dated 10 or more years ago and does not deal with his ability to perform activities of daily living. Based on this, the Panel finds that the Ministry reasonably determined that a severe mental impairment under s. 2(2) of the EAPWDA was not established.

Appellant's position – Severe physical impairment

The Appellant argued that his physician did not accurately describe his difficulties in functioning because the physician said he did not have direct experience of them, saying he does not live in the Appellant's home. The Appellant's mother submitted a list of the Appellant's difficulties in daily functioning.

Ministry's position – Severe physical impairment

The Ministry argued that the Appellant does not have a severe physical impairment based on the information provided. The ministry noted that the Appellant is reported to have no limitations in functional skills in the PR and to be independent in all aspects of mobility and physical ability in the AR, which are not indicative of a severe physical impairment.

Panel's decision – Severe physical impairment

The Panel notes the differences between the Appellant's self-report and his mother's evidence and the physician's report contained in his PWD application. The Panel finds that the Ministry reasonably determined a severe physical impairment has not been established on the basis of the information provided. As argued by the Ministry, the AR and PR do not confirm that the Appellant's impairment of physical functioning is severe. As noted by the Ministry, no functional limitations were reported by the physician, and acting as assessor, the physician reported all aspects of mobility and physical functioning to be independent. In addition, there is no diagnosis of a physical impairment.

As the determination of PWD designation is largely based on functioning and as information from a medical practitioner is the fundamental basis for assessing PWD eligibility, the Panel finds that the Ministry reasonably determined that a severe physical impairment under EAPWDA s. 2(2) was not established.

Restrictions in the ability to perform DLA's

Appellant's position

The Appellant argued that his physician did not feel he could describe the Appellant's day to day abilities. The Appellant argued that the information provided, taken with the Appellant's mother's information as his primary caregiver should be enough to establish the level of support he requires. The Appellant argued that his physician indicated in the PR that four of his DLA's are continuously restricted, and the need for assistance varies day to day with respect to social functioning and cognitive areas.

Ministry's position

The Ministry noted that the Appellant's physician reported that the information provided in the PWD application was reported to him by the Appellant's mother and he could not confirm the level of impairment/restrictions as

he had not seen the Appellant in over a year. The Ministry stated that the Appellant's physician reported that no medications have been prescribed that would interfere with his ability to perform DLA's. The Ministry argued that the Appellant is reported to have limitations in performing DLA's, but the frequency and duration of the assistance required is not described in order to determine if they represent a significant restriction to the Appellant's overall level of functioning. The Ministry stated that they are not satisfied that the information provided meets the legislative criteria that his impairment directly and significantly restricts the Appellant's ability to perform DLA's continuously or periodically for extended periods.

Panel's decision – Restrictions to DLA's

Subsection 2(2)(b)(i) of the EAPWDA requires the Ministry to be satisfied that in the opinion of a prescribed professional an applicant's severe impairment directly and significantly restricts DLA's either continuously or periodically for extended periods. In the present case, the Appellant's physician is the prescribed professional who provided information respecting the appellant's ability to perform DLA. DLA's are defined in section 2(1) of the EAPWDR and are also listed in the PR, with additional details in the AR. Therefore, a prescribed professional completing these forms has the opportunity to indicate which, if any, DLA's are significantly restricted by the Appellant's impairments either continuously or periodically for extended periods.

The Panel notes the disparity between the physician's report of the Appellant's ability to perform DLA's and that of his primary caregiver, his mother. In the PR, the physician reports that the Appellant is continuously restricted in performing personal self-care, meal preparation, daily shopping and management of finances. In the AR, six of seven aspects of personal care are reported to be performed independently, with one requiring periodic support. Three of four aspects of meals are reported to require periodic assistance, with one performed independently; three of five aspects of shopping are reported to require periodic assistance, with two performed independently; all aspects of paying rent and bills are reported to require periodic assistance. No aspect of any DLA is reported to require continuous assistance and there is no information provided regarding the type or duration of assistance required. With respect to social functioning, all aspects are reported to require periodic support/supervision, with no details provided. Other than the note "mother", there is no information about assistance provided by other people. Therefore, the panel finds that the ministry reasonably determined that the physician's assessments do not provide enough evidence to confirm that the appellant has a severe impairment that significantly restricts his ability to perform DLA either continuously or periodically for extended periods and that the criteria of section 2(2)(b)(i) of the EAPWDA were not met.

Help to perform DLA's

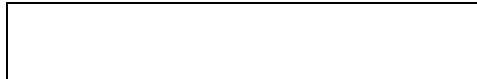
The Appellant argued that he requires frequent ongoing support from his mother and others to manage many aspects of his DLA's, including cooking, cleaning, keeping appointments and coping with social situations.

The ministry's position is that because it has not been established that DLA are significantly restricted, it cannot be determined that help is required.

Panel Decision

Section 2(2)(b)(ii) of the EAPWDA requires that, as a result of direct and significant restrictions in the ability to perform DLA, a person requires help to perform those activities. Help is defined in subsection (3) as the requirement for an assistive device, the significant help or supervision of another person, or the services of an assistance animal in order to perform DLA.

The establishment of direct and significant restrictions with DLA are a precondition of the need for help criterion. As the panel found that the ministry reasonably determined that direct and significant restrictions in the appellant's ability to perform DLA have not been established, the panel also finds that the Ministry



reasonably determined the criterion for help under EAPWDA s. 2(2)(b)(ii) was not met.

Conclusion

The Panel finds that the Ministry's reconsideration decision denying the Appellant's PWD application was reasonably supported by the evidence. The Panel therefore confirms the Ministry decision.

The Appellant's appeal is not successful.